

# In the Supreme Court of the United States

OCTOBER TERM, 1924

UNITED STATES BEDDING COMPANY, AP-  
pellant  
*v.*  
THE UNITED STATES

No. 143

*APPEAL FROM THE COURT OF CLAIMS*

**BRIEF ON BEHALF OF THE UNITED STATES**

## **STATEMENT OF THE CASE.**

This is an appeal by the United States Bedding Company from a judgment of the Court of Claims, sustaining a demurrer to the amended petition of claimant which questioned the sufficiency of the facts averred therein to constitute a cause of action.

The amended petition alleges in substance as follows:

That on May 27, 1918, claimant was the owner of 700 bales of cotton linters (373,612 pounds). On that date the War Industries Board issued a compulsory order (Exhibit A, Rec. 3) requisitioning all existing stocks of linters, and that claimant and all others were forbidden to sell to any one but the Government.

That on July 10, 1918, the War Industries Board issued another regulation authorizing the Du Pont American Industries, Incorporated, to issue orders for all linters requisitioned. Pursuant thereto, the Du Pont Company, at prices fixed by the Government, requisitioned (also referred to as an offer to purchase), inspected, and classified the cotton in issue, directing that it be consigned to the War Department. Claimant refused to accept the prices fixed in the order of the Du Pont Company, or to sell, ship, or deliver the linters to the Government, and held the cotton to be commandeered by the Ordnance Department.

Claimant further alleges that upon the refusal to sell the cotton, the Government officers forbade the claimant to dispose of or use the linters, but instructed claimant to hold them until commandeered. Claimant also alleges, "the Ordnance Department then began exercising the right to commandeer by which the owner was to be given an opportunity to establish the actual value of the linters, but before this commandeering process was completed the Armistice was signed and the Government did not take the linters."

It is further alleged that the purchasing order of the Du Pont Company in specifying the right to hold this stock of linters until commandeered constituted a withdrawal from sale of the same by the United States and was a taking by the Government without agreement or consent of the claimant and over its protest; by reason whereof the claimant

was prevented from selling the linters to others at a more profitable price than that offered by the United States.

In November, 1918, a further order or regulation was issued releasing all linters held under such prior orders or regulations, thereby flooding the market, so that the claimant suffered a loss of \$11,744.18 in the sale of its stock of linters, being the difference between what it could and would have sold the linters for had it not held them to be commandeered, and what they sold for thereafter. (Rec. 1, 2.)

A general demurrer to the amended petition of claimant, filed by the United States upon the ground that the facts set forth therein did not constitute a cause of action, was sustained upon the following grounds, the court entering an order dismissing the petition (Rec. 5, 6):

(1) The averments do not show a contract, express or implied, whereby the Government agreed to pay for the linters.

(2) There was no taking or appropriation by the Government of the plaintiff's linters.

(3) The plaintiff refused the Government's price for its linters and "held same to be commandeered," and this course was not adopted by the Government.

(4) The order "releasing all linters" gives no right of action.

The sole question involved is whether the United States, expressly or impliedly, agreed to take the cotton linters involved.

The claimant contends: First, that the rules and regulations of the War Industries Board constitute an implied agreement by the United States to purchase or requisition the linters. Secondly, that the regulation of the commodity by the Government constituted a "taking" of private property without just compensation.

The Government contends: First, that the cotton linters were never requisitioned by either the Du Pont American Industries, Incorporated, or by the Ordnance Department. Second, that no contract to purchase can be implied from the regulations involved. Third, that the control exercised by the United States over this commodity did not constitute a "taking" of claimant's property without just compensation.

#### **ARGUMENT**

##### I

**The United States did not requisition or commandeer the cotton linters in issue; nor did it agree, either expressly or impliedly, to purchase them**

From the report of the War Industries Board to President Wilson, entitled "American Industry in the War," pp. 172-174, the following appears:

On April 4, 1918, the War Industries Board organized what was known as the Cotton Linters Section of the Board, with George R. James, Chief, for the purpose of assuming control, as a war measure, of the manufacture and sale of cotton linters, one of the ingredients used in manufacturing explosives.

The mattress manufacturers used a great deal of this commodity, as did also the bedding manufacturers.

Immediately upon the organization of this branch of the War Industries Board, a nation-wide inventory of cotton linters on hand was taken by the use of a series of questionnaires sent to the manufacturers and dealers thereof.

As to the bedding and mattress industries the control thereof was limited to a denial of the use of cotton linters produced after May 2, 1918, except for the manufacture of explosives. This same control applied to all other industries not engaged in making explosives. The use of cotton linters could only be used for other purposes by special license or permit of the War Industries Board.

Following the questionnaires, the War Industries Board issued several bulletins, or regulations, giving advice and instructions relative to the sale of linters to the Government or manufacturers of explosives. The claimant relies upon two of these bulletins in support of its claim, both of which it is alleged show clearly an implied agreement of the United States to buy the linters at a fixed price, or if the price named should not be acceptable, the latter would "take" the linters, the price thereafter to be determined.

Nothing could be further from the mark. The first one issued on May 27, 1918, referred to as Exhibit A to the amended petition, in outlining the

purpose of the control of this commodity, and the policy of the government with regard to the purchase thereof, states:

For your information and guidance you are advised \* \* \*.

All linters that have not voluntarily been tendered the Government at the price fixed for munition linters will be commandeered *as the actual needs develop*, and the commandeering process itself will give ample opportunity for the owners of special high-grade linters cut for mattresses and other industries to establish the value of their product in each individual case.

That regulation simply informed dealers that they could sell voluntarily their stocks of linters to the Government at fixed prices, or in the alternative hold them until the needs therefor required the Government to commandeer them.

The other regulation referred to as Exhibit B to the amended petition gives notice to manufacturers, dealers and users of cotton linters that the DuPont American Industries Company, as purchasing agent for the Ordnance Department, is authorized to buy linters of the grades and at the prices therein designated. In this connection it states:

It is suggested that by agreement between the inspector acting for the purchasing agency of the Ordnance Department and the owners of the linters purchase can be made on the basis above suggested, but it must be understood that (fol. 9) the prices named are not

obligatory or by authority of the War Industries Board, but are, in the opinion of the representatives of the U. S. Bureau of Markets and the cotton and cotton products section of the War Industries Board, acting as a committee, fair and just prices that should be paid for these three selected grades.

The regulation then goes on to state with respect to a plan for commandeering the linters:

In the event agreement cannot be reached between the inspector and the owner, *then the Ordnance Department may exercise its right to commandeer, which process gives the owners opportunity to establish the actual value of their commodity in each instance.* [Italics supplied.]

Under the plan announced, the claimant could either sell to the Government at the prices designated in the regulations or elect to hold its stock of linters until commandeered by the Ordnance Department the latter affording it the opportunity of proving the actual value of the linters.

This is precisely what the claimant did. It alleges that it refused to sell to the DuPont Company at the prices designated in the order and elected to hold its stock until commandeered in order to obtain a better price for the linters.

It is nowhere alleged that the Ordnance Department commandeered the cotton in question. But it is alleged that before the commandeering process was completed the Armistice was signed and the Government did not take the linters. (Rec. 2.)

The claimant was under no obligation to the

Government under the foregoing regulations, or otherwise, to hold its stock until commandeered. It did so of its own volition in the hope that that action would be taken so that the claimant could receive the actual value thereof.

The claimant was not prevented at any time from selling to manufacturers of explosives or by permission of the Government to other industries.

The claimant is seeking to recover for losses sustained by its own voluntary action of holding the linters involved in the hope that they would be commandeered by the Government, and because the latter did not do so, claimant contends it is liable therefor. It is submitted that there is no merit in the claim.

## II

**The United States is not liable for any losses sustained by reason of its control of this commodity**

There is no difference in principle between the case at bar and *Morrisdale Coal Company v. United States*, 259 U. S. 188, in which this court through Mr. Justice Holmes, at page 189, said:

The petition does not allege or mean that the United States took the coal to its own use. The meaning attributed to it by the claimant is merely that the Fuel Administration fixed the price on coal of this quality at \$3.304 per gross ton, and issued orders from time to time directing coal to such employments as best would promote the prosecution of the war  
\* \* \*

Continuing, the Court, after referring to the contention of the complainant that the regulations constitute an implied contract to reimburse it for any loss by reason thereof, at page 190, says:

We see no ground for the claim. The claimant in consequence of the regulation mentioned sold some of its coal to other parties at a less price than what otherwise it would have got. That is all. It now seeks to hold the Government answerable for making a rule that it saw fit to obey. Whether the rule was valid or void no such consequence follows. Making the rule was not a taking, and no law-making power promises by implication to make good losses that may be incurred by obedience to its commands. If the law requires a party to give up property, to a third person, without adequate compensation, the remedy is, if necessary, to refuse to obey it, not to sue the law maker.

The fact that in the *Morrisdale Coal case* the control consisted of the fixing of prices, whereas here it consists in restricting the sale of a commodity to certain persons, is immaterial. The principles announced in that case are applicable to and control the one at bar. See also *Pine Hill Company v. United States*, 259 U. S. 191, in which this court held that losses sustained by reason of price fixing on the part of the Fuel Administrator did not constitute a taking of the claimant's property. See also *Hamilton v. Kentucky Distilling Co.*, 251 U. S. 146 (Wartime Prohibition).

**CONCLUSION**

The judgment of the Court of Claims should be affirmed.

JAMES M. BECK,  
*Solicitor General.*

ALFRED A. WHEAT,  
*Special Assistant to the Attorney General.*

DECEMBER, 1924.

